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ARIZONA CORPORATION COMMISSION

DOCKET FILE COPY ORIGINAL

JACK ROSE  
EXECUTIVE SECRETARY

December 3, 1997

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street  
Room 222  
Washington, D.C. 20554

RECEIVED  
DEC 4 1997  
FEDERAL COMMUNICATIONS COMMISSION

**RE: ARIZONA CORPORATION COMMISSION'S PETITION FOR EXPEDITED  
WAIVER OF 47 C.F.R. § 54.409(a) DOCKET NO. 96-45**

Dear Secretary Salas:

Enclosed is an original and nine copies of the Arizona Corporation Commission's Petition for Expedited Waiver of 47 C.F.R. § 54.409(a) of the FCC's Rules and Regulations on Lifeline Service. Please provide a copy of the Petition to each of the Commissioners.

If you have any questions regarding this matter, please do not hesitate to contact me at (602) 542-6024.

Very truly yours,

ARIZONA CORPORATION COMMISSION

A handwritten signature in cursive script that reads "Paul A. Bullis".

Paul A. Bullis  
Chief Counsel  
Legal Division

PAB:mi  
Enclosure

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LSC-Arizona  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

RECEIVED  
DEC 4 1997  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
FEDERAL-STATE JOINT BOARD	)	CC Docket No. 96-45
ON UNIVERSAL SERVICE	)	

**REQUEST OF THE ARIZONA CORPORATION COMMISSION  
FOR EXPEDITED WAIVER OF 47 C.F.R. § 54.409(a)**

The Arizona Corporation Commission ("ACC"), pursuant to 47 C.F.R. § 1.3, hereby requests a temporary waiver until July 30, 1998, of the requirement contained in 47 C.F.R. § 54.409(a) that states base eligibility for intrastate matching funds under the federal Lifeline program solely on income, for customers in Arizona who qualify for federal Lifeline assistance under the Arizona Low Income Telephone Assistance Program.<sup>1/</sup> The waiver will permit existing low-income customers in Arizona to continue to receive federal Lifeline assistance under this state program as they have in the past, pending changes to state law to bring the eligibility criteria into compliance with the new federal standards contained in 47 C.F.R. § 54.409(a) and para. 373 of the FCC's First Report and Order.

The ACC is also requesting an indefinite waiver of the new federal eligibility standards contained in 47 C.F.R. § 54.409(a) for U S WEST Communication Inc.'s ("USWC") Telephone Assistance Program ("TAP") for the medically needy or disabled. The ACC established the TAP as part of USWC's last rate case and would like to keep it in place as a separate program. As a separate program, this narrowly defined class of customers will continue to receive a much

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<sup>1/</sup> The ACC seeks clarification from the FCC on whether it may allow Arizona eligible telecommunications carriers to use the federal default criteria during the interim period.

higher credit than they would receive if the TAP program was merged into the Lifeline program. Additionally, with federal matching funds the reach of the TAP program could be expanded.

The ACC is requesting expedited action so that the effective date of the waivers will coincide with the new federal Lifeline program's scheduled implementation date of January 1, 1998. If the FCC is unable to take action on the ACC's waiver request by January 1, 1998, the ACC requests that any waiver subsequently granted be made retroactive to January 1, 1998. This will ensure that existing Arizona low-income customers who now benefit from the state programs will not be disadvantaged once the new federal program takes effect.

There are presently two separate telephone assistance plans in Arizona for low-income customers. The first plan, provided by statute, is the Low Income Telephone Assistance Program contained in Ariz. Rev. Stat. §§ 46-701-46-704, a copy of which is attached. While the Low Income Telephone Assistance Program is applicable to all Arizona local exchange carriers ("LECs"), not all Arizona LECs have customers which qualify for assistance under this program at the present time. Ariz. Rev. Stat. § 46.702 currently provides that to be eligible for the Low Income Telephone Assistance Program, "applicants must be a head of household, be sixty-five years of age or older and have a household income at or below the poverty level as determined by the United States office of management and budget and reported annually in the federal register." Qualifying customers receive a 17% discount to their local service bills and a partial offset to the federal Subscriber Line Charge ("SLC") through the existing Lifeline program. Matching state funding is provided through offsetting credits to the LECs' annual sales tax assessment.

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The second assistance program available only to customers of USWC is the TAP for

the medically needy or disabled. Currently, TAP customers receive a credit of \$13.43 (USWC's local service rate) with a \$3.50 offset to the federal SLC provided through the existing federal Lifeline plan. USWC received an allotment of approximately \$1.0 million annually in its last rate case to fund this program

As discussed, the criteria for participation in the Arizona Low Income Telephone Assistance Program is codified in state law, and is based upon factors in addition to income; which conflict with the new federal standards contained in 47 C.F.R. § 54.409(a) and paragraph 373 of the FCC's May 8, 1997, Report and Order. The new federal standards require that eligibility for state matching funds be based solely on income. While it is unclear, the ACC is concerned that because of this conflict, existing Arizona low-income customers who now fall under the auspices of this state program, may become ineligible for all or a portion of federal assistance given the disparity between the state criteria with the new federal standards.

It is anticipated that legislative changes to the Low Income Telephone Assistance Plan's eligibility criteria to achieve consistency with the new federal standards, will be sought in the next session of the Arizona Legislature. However, the necessary changes would not go into effect until July 30, 1998, at the earliest; which is well after the new Lifeline program's scheduled implementation date of January 1, 1998. Therefore, the ACC seeks a temporary waiver of 47 C.F.R. § 54.409(a) until July 30, 1998, at which time the necessary amendments to Ariz. Rev. Stat. § 46.702 should be effective.

In addition, the ACC seeks an indefinite waiver of the eligibility criteria contained in 47 C.F.R. § 54.409(a) so that USWC's TAP program for the medically needy or disabled can remain in place and USWC can receive federal matching funds for this program in the future. If the

eligibility criteria is changed to be consistent with the new federal Lifeline eligibility criteria, this small group of customers would only receive a maximum of \$10.50 in support in the future. Therefore, grant of the waiver would permit this narrow class of customers to continue to receive the same, higher level of assistance that they receive today. In addition, with federal matching funds, the reach of the TAP program could be extended beyond its current base of customers. The ACC notes that the increased support is provided solely through state funding; and the only effect of denying the waiver would be to disqualify this narrow group of customers from receiving federal assistance which they would otherwise be entitled to under the expanded Lifeline eligibility criteria. Therefore, the ACC requests that the FCC waive indefinitely the federal eligibility standards contained in 47 C.F.R. § 54.409(a) for USWC's TAP plan so that the program can remain in effect and TAP customers can continue to receive their current levels of support.

The ACC submits that the criteria for waiver are present in this case. Under Section 1.3 of the FCC's rules, the FCC may exercise its discretion to waive a rule where there is "good cause" to do so. A waiver is appropriate if special circumstances warrant a deviation from the general rule and will serve the public interest. Examples of special circumstances include hardship imposed by the rule's enforcement, equity, or more effective implementation of overall policy on an individual basis.<sup>2/</sup>

There is good cause to grant the requested waivers in this instance. The waiver for the Low Income Telephone Assistance Plan contained in Ariz. Rev. Stat. §§ 46.701-46.704 would be temporary in nature until such time as state law can be amended to comply with the new federal

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<sup>2/</sup> See *In the Matter of Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, CC Docket No. 96-98 (Rel. April 4, 1997).

standards. Unless granted, hardship may result to Arizona low-income customers since they may technically be ineligible for federal assistance funds due to the disparity in state and federal eligibility criteria. It would be inequitable to deny Arizona low-income customers the benefits of the new Lifeline program available to other low-income customers across the country, pending the necessary changes to state law.

Finally, the indefinite waiver requested for USWC's existing TAP plan would allow this important program to remain in place permitting existing TAP customers to continue to receive the same level of support which they receive today, rather than the lower amount which they would receive if the TAP program was merged into the Lifeline program.

For the reasons stated above, the ACC respectfully requests that the FCC grant its request for a temporary waiver until July 30, 1998, of the requirement contained in 47 C.F.R.

§ 54.409(a) that eligibility for state matching funds be based solely on income for customers qualifying under the Arizona Low Income Telephone Assistance Program so that these customers can continue to receive the benefits from the federal Lifeline program. The ACC also respectfully requests that the FCC grant an indefinite waiver of the eligibility criteria contained in 47 C.F.R.

§ 54.409(a) so that USWC's TAP program for the medically needy or disabled can remain in place as a separate program providing a higher level of assistance to this narrow class of customers

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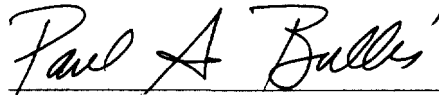
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and so that USWC will have the ability to assist more customers with the matching assistance provided from the revised federal Lifeline program.

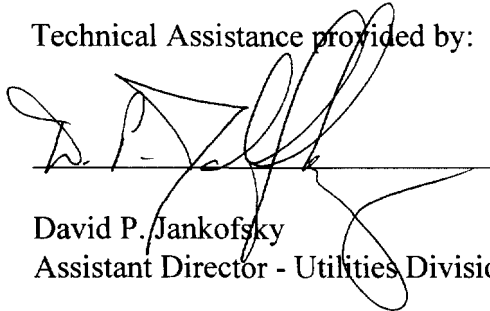
RESPECTFULLY SUBMITTED,



Maureen A. Scott  
Christopher C. Kempley  
Paul A. Bullis

Attorneys for the Arizona Corporation  
Commission

Technical Assistance provided by:



David P. Jankofsky  
Assistant Director - Utilities Division

ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Dated: December 3, 1997.

condition for payment of a warrant issued pursuant to § 46-702.

#### 46-602. Department may contract for services

The department may establish locations throughout the state for producing and processing the cards authorized by § 46-601. It may contract with private or public suppliers of the services necessary for production of the identification cards.

1973

#### 46-603. Fraudulent use of identification card: violation; classification

Any person who knowingly alters or utilizes the identification card prescribed by this article for any fraudulent purpose is guilty of a class 2 misdemeanor.

1978

## CHAPTER 6

### UTILITY ASSISTANCE

#### ARTICLE 1. TELECOMMUNICATIONS SERVICE ASSISTANCE; GENERAL PROVISIONS

- |         |   |
|---------|---|
| Section |   |
| 46-701. | Telecommunications service assistance program; administration; rules.   |
| 46-702. | Assistance eligibility; list.   |
| 46-703. | Assistance rate credit; form; applicable services; amount; application. |
| 46-704. | Budget request.   |

#### ARTICLE 3. UTILITY REPAIR AND DEPOSIT ASSISTANCE

- |         |   |
|---------|---|
| 46-731. | Utility assistance fund; purposes; administration; nonreversion; reimbursement for administrative costs; definitions. |
| 46-732. | Eligibility; limits.  |

#### ARTICLE 4. NEIGHBORS HELPING NEIGHBORS FUND

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| 46-741. | Neighbors helping neighbors fund; definition. |
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#### ARTICLE 1. TELECOMMUNICATIONS SERVICE ASSISTANCE; GENERAL PROVISIONS

##### 46-701. Telecommunications service assistance program; administration; rules

A. A telecommunications service assistance program is established to provide eligible recipients with a reduction in costs of telecommunications services.

B. The program shall be administered by the department in accordance with the provisions of this chapter and rules promulgated by the department for the program.

1986

##### 46-702. Assistance eligibility; list

A. To be considered eligible for the telecommunications service assistance program, applicants must be a head of household, be sixty-five years of age or older and have a household income at or below the poverty level as determined by the United States office of management and budget and reported annually in the federal register. The department shall develop procedures for taking applications for assistance and for determining program eligibility.

B. Each year the department shall provide a list or lists of the names, addresses and if applicable, telephone numbers of all eligible recipients to each local exchange telephone company. The local exchange telephone company shall determine from the list those recipients to which the company provides service.

1986

##### 46-703. Assistance rate credit; form; applicable services; amount; application

A. The local exchange telephone company shall provide assistance to all recipients determined to be eligible pursuant

to § 46-702 in the form of a credit on their telephone bill. Such a credit on the telephone bill shall apply to the following:

1. Flat rate local exchange services.
2. Local exchange access services in measured service circumstances.
3. Local area calling usage limited to an amount that in conjunction with the exchange access service does not exceed the comparable flat rate total.
4. The charge for maintenance of inside wiring.
5. The installation charge for basic service one time during any calendar year.

B. The credit allowed by the telecommunications service assistance program is seventeen per cent of the rate set by the corporation commission for the services in subsection A, either paragraphs 1, 4 and 5 or paragraphs 2 through 5, whichever is applicable, to the services being received by the eligible recipient.

C. The department shall apply for a waiver for the mandated customer access line charges pursuant to the federal communications commission CC docket 78-72, 80-286. Upon receipt of the waiver, the assistance provided by the local exchange telephone company pursuant to subsection A shall include a waiver of the mandated customer access line charge.

1986

##### 46-704. Budget request

The department shall include the cost of administering the telecommunications service assistance program in its annual budget request.

1986

#### ARTICLE 3. UTILITY REPAIR AND DEPOSIT ASSISTANCE

##### 46-731. Utility assistance fund; purposes; administration; nonreversion; reimbursement for administrative costs; definitions

A. A utility assistance fund is established in the state treasury to provide eligible recipients with assistance in making utility deposits and owner repairs or replacement of utility related appliances or systems. The department shall administer the fund. Monies in the utility assistance fund shall not exceed one million dollars. Any amount in excess of one million dollars shall be deposited in the state general fund. Eligible recipients are individuals who are in crisis situations requiring utility repair, deposit assistance or replacement of utility appliances or systems, who have a household income at or below one hundred twenty-five per cent of the poverty level or who are sixty years of age or older or handicapped and who have a household income at or below one hundred fifty per cent of the poverty level. The need for replacement of utility related appliances or systems shall be related to a documented crisis situation. Replacement of utility related appliances is limited to situations in which repair costs exceed replacement cost or an appliance is found to be inoperable with repairs. For the purposes of this subsection, the poverty level is as determined by the United States office of management and budget and reported in the federal register.

B. A deposit, including any interest on the deposit, that is made by a subscriber with a utility to secure payment or any amount that is paid in advance for utility services to be furnished, less any lawful deductions or any amount held by a utility that the utility has been ordered to refund by a court or administrative agency, and that remains unclaimed by the subscriber for more than two years after the termination of the services for which the deposit or advance payment was made, or for more than two years after the refund becomes payable and distribution occurs pursuant to the final order of the court or administrative agency that has jurisdiction to establish the terms and conditions of the refund, is presumed